IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5367 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHARATKUMAR SURESHBHAI KARADIYA

Versus

POLICE COMMISSIONER AHMEDABAD

Appearance:

MR MITUL K SHELAT for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/08/2001

ORAL JUDGEMENT

#. Rule. Mr.Joshi, learned AGP waives service of rule for the respondents. By consent of the parties, the matter is taken up for final hearing today.

#. The father of the petitioner was serving as Head

Constable and he died while in service on 24.5.1999. Death certificate of the deceased is annexed at page 12 of the petition. Since he was only earning member in the family, after his death, the petitioner has applied for appointment on compassionate ground by application which is according to Mr.Shelat is dated July 1999 which at page 35. Along with the application, all particulars were given. Ultimately by order dated 27.7.2000 the request of the petitioner was turned down on the ground that the total income from the pension of the deceased employee is exceeding the prescribed limit of Rs.2500/-.

#. So far as the income of the family pension is concerned, this Court has taken the view in Special Civil Application No.11020 of 1993 in the case of Dilipainh B Rathod Vs. State of Gujarat that while considering the total income of the family of the deceased, income of the pension is not required to be taken into consideration. In para 3 it has been observed by this Court as under :

"Learned counsel for the petitioner has argued that while computing the monthly income for the purpose of examining the eligibility for seeking appointment on compassionate grounds, the family pension cannot be included and the appointment on compassionate grounds cannot be denied on the ground of receipt of family pension. To buttress his argument, the learned counsel for the petitioner has placed reliance on a decision of this Court on the case of C.B.Maru V Dhanduka Nagar Panchayat, reported in 1993(2) GLH 822 and yet another decision of this Court in the case of Manubhai Gothabhai Desai V State of Gujarat and ors. reported in 1998(1) GLH (UJ) 23. In C.B.Maru's case (supra), this Court while placing reliance in the case of Smt.Phoolwati Vs. Union of India and ors, reported in AIR 1991 SC 469 has taken the view that merely because the widow of the deceased employee was entitled to some retiral benefits, that by itself can never be made ground to refuse appointment to the son of the deceased employee on compassionate grounds. In that case, the widow of the deceased employee was getting a family pension of Rs.645/- per month and her husband had died on 15th October, 1990. In the case of C.B.Maru (supra) the other details of income regarding Dearness Allowance, Medical Allowance etc. had not been given, but looking to the amount of family pension of Rs.645/-, it is obvious that if the Dearness Allowance, and Medical Allowance had been taken

into consideration, the income may have exceeded Rs.1000/-. In the present case, the father of the petitioner had died in April, 1991 and, in the case of C.B.Maru (supra) the date of the death of deceased is October 1990 and therefore, there is hardly a difference of about six months in the date of death. Even if 505 Dearness Allowance is added to Rs.645/-, it would come to Rs.645/- + Rs.322.50 i.e. Rs.967.50/-, and to that, even if the Medical Allowance of Rs.75/- is added or even Rs.50/-, it would exceed Rs.1000/-. In any case, the fact remains that this Court has taken the view in the case of C.B.Maru that appointment on compassionate grounds cannot be denied on the ground of receipt of retiral benefits including the amount of family pension. In another case of Manubhai Gothabhai Desai (supra) this Court while placing reliance on C.B.Maru's case (supra) has categorically observed that while computing the income of the family, the amount of pension ought not to have been considered. In this view of the matter, there remains no scope to sustain the stand taken by the respondents to take the monthly income of the family in the present case to be more than Rs.1000/- merely because the widow i.e. petitioner's mother is getting Rs.450/- and the total income of the pension is Rs.908/-. If the income of the pension is not to be included as has been held by this Court in the cases aforesaid, the monthly income of the petitioner's family would certainly come out to be less than Rs.1000/- and therefore, this Court has no hesitation in holding that the stand taken by the respondents and the denial of the consideration of the petitioner's case for appointment on compassionate grounds as has been taken by the respondents and conveyed to the petitioner is not at all tenable in eye of law. On such grounds, the petitioner's application could not be rejected for appointment on compassionate grounds. The communication sent to the petitioner as contained in Annexure `A' dated 9.6.1992 rejecting his application is, therefore, set aside. The respondents are directed to consider the petitioner's application for appointment on compassionate grounds in accordance with law and in doing so, the appointment shall not be denied to the petitioner on the ground that the monthly income of the family exceeds Rs.1000/-. The respondents are

directed to take a decision on the petitioner's application for appointment on compassionate grounds, at the earliest possible opportunity and issue appropriate orders in accordance with law within a shortest possible period, but in no case, later than a period of one month from the date of copy of this order is served upon the Respondent authority. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms aforesaid. It would be open for the petitioner to serve the certified copy of this order and for that purpose, direct service is permitted."

#. Therefore, naturally while deciding the question of compassionate appointment and considering the income criteria as per the aforesaid order of this court, income of family pension is not required to be taken into consideration.

#. Under these circumstances, the petition is required to be allowed and the matter is required to be sent back to the respondent authority to reconsider the case of the petitioner for appointment on compassionate ground in accordance with law. The respondent authority is directed to dispose of the application of the petitioner for appointment on compassionate ground as early as possible and in any case on or before 30.11.2001. It is needless to say that the application may be decided on its own merits except considering the income of the family pension of the deceased. It will be open for the department to take into consideration all other aspects. The writ of this order to be sent forthwith. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)